

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 14, 2004**

AGENDA ITEM NO.: 19

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **722 Commerce Street—Dance Theatre of Lynchburg**

RECOMMENDATION: Extend the option for the Dance Theatre of Lynchburg to purchase the property at 722 Commerce Street under the original terms.

SUMMARY: On July 13, 2004 the Dance Theatre of Lynchburg appeared before City Council in its work session to request an extension of its expired option to purchase 722 Commerce Street and a reduction in price. The Council report from that meeting is attached. The Council members present voted 4 to 1 to extend the option under the original terms. Subsequently, the City Attorney has informed Council, by memo dated July 14, 2004 (attached), that the extension of the option requires the affirmative vote of five (5) Council members. Accordingly, this matter is being brought before Council again for action. Also included with this report is a letter from the Dance Theatre, dated July 27, 2004, reiterating their request for a reduction in the price of the property.

PRIOR ACTION(S): September 26, 2000, City Council approved the sale of the property
July 13, 2004, City Council, by a 4 to 1 vote, agreed to extend the option agreement

FISCAL IMPACT: \$20,000 reduction in anticipated revenues. The revenues are not budgeted.

CONTACT(S): Kimball Payne, Walter Erwin

ATTACHMENT(S): July 13, 2004 Council report; July 14, 2004 memo from the City Attorney; July 27, 2004 letter from the Dance Theatre

REVIEWED BY: lkp

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **July 13, 2004, Work Session**

AGENDA ITEM NO.: 2

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **722 Commerce Street—Dance Theatre of Lynchburg**

RECOMMENDATION: Extend the option for the Dance Theatre of Lynchburg to purchase the property at 722 Commerce Street and consider a reduction in price for the building.

SUMMARY: In November 2000 Dance Theatre of Lynchburg signed an option to purchase the property at 722 Commerce Street for \$40,000. A copy of the option agreement is attached. The option expired in November 2003 and the Dance Theatre had been advised of that beforehand by the City Attorney (see attached letter). Recently, the Chairperson of the Board of Directors of the Dance Theatre has requested that the sales price be reduced (see attached letter). Although not specifically requested in the letter, continuing discussion of the pending sale would require an extension of the option agreement. Section (8) of the Option Agreement provides that the terms and conditions of the agreement can be amended by a written document executed by both the City and the purchaser.

Dance Theatre of Lynchburg has occupied the building rent free since 2000 and has completed significant renovations that have both enhanced the value of the building and 700 block of Commerce Street. The property is currently assessed at \$155,600 (\$17,300 land/ \$138,300 improvements).

PRIOR ACTION(S): September 26, 2000 city Council approved the sale of the property. Excerpts of Council's minutes and a copy of the staff report are attached.

FISCAL IMPACT: \$20,000 reduction in sale price. The revenues are not budgeted.

CONTACT(S): Kimball Payne, Walter Erwin

ATTACHMENT(S): Excerpts of Council minutes and staff report regarding the proposed sale of the property; Option Agreement; Letter from City Attorney advising of the imminent expiration of the option agreement; Letter from Chairperson of the Dance Theatre of Lynchburg Board of Directors seeking a reduction in the purchase price; map showing the location of the property.

REVIEWED BY: lkp

FORM K AGENDA ITEM #16

CITY COUNCIL MEETING OF SEPTEMBER 26, 2000

Page 1 of 1

// In the matter of Community Planning – General/Public Works - General, Resolution #R-00-189 authorizing the sale and conveyance of properties at 723-727 Jefferson Street and 722 Commerce Street to Mark Smith and the Dance Theatre of Lynchburg, respectively, in accordance with the terms of the Agreements of Sale, dated June 27 and June 28, 2000, laid over from the September 12, 2000 meeting, was again presented and read, and on motion of Council Member Barksdale, seconded by Council Member Dodson, Council by the following recorded vote adopted the Resolution:

Ayes: Adams, Barksdale, Dodson, Garber, Hobbs, Seiffert, Hutcherson 7

Noes: 0

FORM G AGENDA ITEM #27

CITY COUNCIL MEETING SEPTEMBER 12, 2000

Page 1 of 1

// In the matter of Community Planning – General/Public Works - General, a public hearing was held regarding City Council Report #27 regarding the proposed sale and conveyance of properties at 723-727 Jefferson Street and 722 Commerce Street to Mark Smith and the Dance Theatre of Lynchburg, respectively, in accordance with the terms of the Agreements of Sale, dated June 27 and June 28, 2000. Mr. Don Pendleton, Associate Broker with Milton Realty Service Company, outlined the two proposals. Two individuals spoke in support of the conveyance of the Commerce Street building to the Dance Theatre. There was no one else present who wished to speak to this item. On motion of Council Member Dodson, seconded by Council Member Barksdale, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-00-189, as presented, approving the proposed sale and conveyance of properties at 723-727 Jefferson Street and 722 Commerce Street to Mark Smith and the Dance Theatre of Lynchburg, respectively, in accordance with the terms of the Agreements of Sale, dated June 27 and June 28, 2000:

Ayes: Adams, Barksdale, Dodson, Garber, Hobbs, Selffert, Hutcherson

7

Noes:

0

COMMUNITY PLANNING - General - #1/PUBLIC WORKS - General - #1
LYNCHBURG CITY COUNCIL REPORT

Meeting Date: September 12, 2000 Council Report #: 27
Strategic Leadership Team Contact: Rachel Flynn Report Writer: Rachel Flynn

Subject: Sale of City-owned properties

Purpose of Action:

- Conduct a public hearing to receive citizen input regarding the sale of municipal property.
- To authorize the sale of City-owned property in order to promote downtown activity and compatible use of vacant structures.

Requested Action:

- Council to approve sale of three City-owned properties.

Prior Action:

- City purchased properties from GE Financial Assurance - July 1999
- City hired Milton Realty to sell properties on open market.
- City Council met in Executive Session on August 8, 2000 to discuss sale of properties.

Attachments:

Attached Agreements of Sale dated June 27 and June 28, 2000.

Resolution:

#R-00-189

BE IT RESOLVED That City Council hereby approves the sale of the properties at 723-727 Jefferson Street and 722 Commerce Street to Mark Smith and the Dance Theatre of Lynchburg, respectively, in accordance with the terms of the Agreements of Sale, dated June 27 and June 28, 2000. Council further approves the execution of a first right of refusal on the property located at 720 Commerce Street to the Dance Theatre of Lynchburg.

BE IT FURTHER RESOLVED that the interim City Manager is hereby authorized to execute the necessary documents to carry out these transfers.

Introduced: September 12, 2000

Adopted: September 26, 2000

Certified: Ruth W. Post
Clerk of Council

for: R. O. Flynn R. A. Booth

259L

Other Information:

City Council purchased six buildings in July, 1999 from GE Financial Assurance at assessed value of \$382,020. This money was drawn from Downtown/Riverfront CIP funds. These buildings had been slated for demolition for surface parking lots. The City Manager wanted the buildings to be fully sprinklered, for safety reasons, which totaled approximately \$20,000. (Also paid for with Downtown CIP funds.) During the purchase negotiations with GEFA, the City Manager and Director of Economic Development offered a subsidy to GEFA of \$250,000, using Downtown/Parking CIP funds. GEFA accepted this offer and used it for the Rt. 29 facility renovation.

Milton

Realty Service
Company, Inc.

P.O. Box 4207, 7806 Timberlake Road, Lynchburg, VA 24502

Donald G. Pendleton, Jr.
Associate Broker
Certified General Appraiser

COPY

Ph. 804-237-3384, Ext. 205 dgpendleton@miltonrealty.com

June 27, 2000

Mr. Roger Beidler
Beidler Realty
Main Street
Amherst, VA 24521

Via Facsimile & US Mail

RE: Proposal for Purchase submitted by Mark Smith
723-727 Jefferson Street

Dear Roger:

The City of Lynchburg is prepared to accept Mr. Smith's original proposal,

Sale Price -	\$41,000
Closing -	As soon as Necessary City Approvals are forthcoming And documentation can be prepared.
Terms -	20% down at Closing - City to finance the balance at 6% annual interest, interest only annual payments, Balance of purchase price due three (3) years after closing.

Subject to the Schedule outlined below -

	Task	Completion Date
1.	Stabilization of the structure to prevent further deterioration. <i>Note - Securing of the window openings cannot be with plywood, or other opaque material.</i>	December 31, 2000
2.	Replacement of deteriorated interior structural elements, leveling of structural elements/roof/skylight replacement	December 31, 2000
3.	exterior restoration	18 Months After Closing Date
4.	HVAC, Electrical & Plumbing repair or replacement	24 Months After Closing
5.	interior renovation of the revenue producing components of Mr. Smith's enterprise(s).	36 Months After Closing

Mr. Smith will hire between 12 and 20 persons as full-time employees to work at 723-727 Jefferson Street.

Prior to closing, Mr. Smith will provide estimates of tax revenue generated by the enterprises that he will conduct at 723-727 Jefferson Street.

If the above terms and conditions are acceptable to Mr. Smith, please have him signify by signing below and returning to me. I have included copies (U.S. Mail) for your files.

The necessary contractual documents will be prepared and the matter will be forwarded to City Council for its consent.

Best regards,

Donald G. Pendleton, Jr.
Associate Broker

cc: Rachel O. Flynn, AIA ✓
Director Community Planning & Development

Charles F. Church, City Manager
V. Lee Cobb, Director of Economic Development
Walter C. Erwin, City Attorney

Accepted and Agreed To:

Mark J. Smith

Milton

Realty Service
Company, Inc.

P.O. Box 4207, 7808 Timberlake Road, Lynchburg, VA 24502

Donald G. Pendleton, Jr.
Associate Broker
Certified General Appraiser

COPY

Ph. 804-237-3384, Ext. 205 dgp@pendleton@miltonrealty.com

June 28, 2000

Mr. Keith Lee, Director
Ms. Margaret Richmond, Director of Development
Dance Theatre of Lynchburg
621 Court Street
Lynchburg, VA 24504

RE: 722 Commerce Street

Dear Keith and Margaret:

Please allow me to offer, on behalf of the City of Lynchburg, the following proposal for the acquisition of 722 Commerce Street by the Dance Theatre of Lynchburg.

Acquisition Cost - \$40,000

Terms -

- Three-Year Lease, Rent free
- Opportunity to close the transaction and acquire fee ownership within the lease term.
- Dance Theatre of Lynchburg is responsible for all operating costs and maintenance associated with the property including maintenance and fire and extended coverage insurance.
- Dance Theatre of Lynchburg is responsible for renovations to the property as specified in the May 15, 2000 proposal.

If the Dance Theatre of Lynchburg is able to

- 1.) renovate per its May 15, 2000 proposal;
- 2.) operate within and maintain the Building at 722 Commerce Street;
- 3.) successfully maintain its business;
- 4.) prove financially capable of acquiring and continuing to maintain the building and its business,

then, the City will ^{sell} ~~consider sale of~~ the building within the three-year lease term. For purposes of securing financing for renovation of the building, the right to obtain title to the property within the three-year lease term will be assignable to the Dance Theatre's lending institution.

If the Dance Theatre of Lynchburg fails to accomplish the four items listed above, the City of Lynchburg reserves the right to recover the property with no payment for any renovations accomplished during the lease term.

If the terms enumerated above are acceptable, please so indicate by signing at the bottom of this letter and returning a copy to me. The necessary contractual documents will be prepared and the matter will be forwarded to City Council for its consent.

Sincerely,

Donald G. Pendleton, Jr.
Associate Broker

cc: Rachel O. Flynn, AIA ✓
Director, Community Planning & Development

Charles F. Church, City Manager
V. Lee Cobb, Director of Economic Development
Walter C. Erwin, City Attorney

Accepted and Agreed To:

Dance Theatre of Lynchburg

By: _____

Its: _____

OPTION TO PURCHASE

THIS OPTION TO PURCHASE, made this 16th of November, 2000, by and between the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, party of the second part, hereinafter called the "Optioner" and DANCE THEATRE OF LYNCHBURG, party of the second part, hereinafter called the "Optionee".

W I T N E S S E T H :

That, for and in consideration of the sum of One Dollar (\$1.00), paid to the Optioner by the Optionee, the receipt of which is hereby acknowledged, as well consideration of the covenants and agreements hereinafter mentioned, the Optioner does hereby grant to the Optionee, the exclusive right or option to purchase at any time within three (3) years from the date hereof, all of that certain lot or parcel of land, situate in the City of Lynchburg, Virginia, and being more particularly described as 722 Commerce Street, Lynchburg, Virginia, hereinafter referred to as the "property" and described as:

Valuation Tax Map No. 045-12-011

That certain lot or parcel of ground situate, lying and being in the City of Lynchburg, Virginia, known as 722 Commerce Street beginning at a point on the line of Commerce Street, 55 feet from its intersection with Eighth Street, and running with the line of Commerce Street 27 ½ feet in the direction of Seventh Street, and back between parallel lines in the direction of Jefferson Street 132 feet to a strip of land now being used as an alley; together with all buildings and improvements thereon and easements and appurtenances thereunto belonging.

This Option Agreement for above described property is subject to the following terms and conditions, to wit:

(1) In the event the Optionee decides to exercise its option to purchase, it shall give the Optioner written notice of its intent to exercise the Option, delivered to the Optioner or mailed to Optioner to the attention of the Property Manager, Public Works Office, 900 Church Street, Lynchburg, Virginia, 24505.

(2) The purchase price for the property shall be Forty Thousand Dollars (\$40,000.00).

(3) The Optionee shall have the first right of refusal for the adjacent property located at 720 Commerce Street. Said first right of refusal shall be exercised at either:

- A. The terminus of this three (3) year agreement, or
- B. Sooner if the Optioner has a bona fide interested purchaser for said 720 Commerce Street and shall give written notice to Optionee, who must exercise its first right of refusal within a reasonable time, not to exceed thirty (30) days or said right shall be forfeited and Optioner shall be free to convey to a party other than Optionee.

(4) In exchange for Optioner delaying conveyance and payment for three (3) years, the Optionee shall:

- A. Undertake renovations to rehabilitate the building at 722 Commerce Street on a schedule consistent with plans presented with offer and to be incorporated into and to be read as a part of this Agreement and shown as Attachment A.
- B. Operate the programs as set forth in Attachment B.
- C. Successfully maintain its business and supply proof of same at the time Optionee exercises its options.
- D. Provide financial documentation of its ability to acquire the real estate and maintain the building and its business at this location.

(5) The Optionee, upon purchase, shall proceed to commence restoration of the building but shall be bound to the Standards For Rehabilitation codified by the Department of Interior, applicable by the establishment by the State of Virginia on April 24, 1987 of the Lower Basin Historical District, which a copy of said Standards shall be proved to Optionee and shall be incorporated into and read as a part of this Agreement.

(6) COMPLAINTS AND NON-COMPLIANCE

In the event the City receives a complaint concerning Optionee's activities carried out in fulfillment of its obligations under this Agreement, or if the City discovers a violation of this Agreement by Optionee, the City will immediately notify Optionee indicating the specific nature of the complaint or the violations. Optionee shall respond directly to the City, as appropriate, within thirty (30) calendar days of Optionee's receipt of the notification from the City. Should the complainant or the City determine that Optionee response is insufficient, a meeting shall be held to discuss the matter. If the matter is resolved, Optionee will confirm the resolution of the matter in written form to the City and the complainant. If the matter is not resolved at the meeting, the City will confirm in writing to Optionee the areas of dispute and request a response from Optionee within ten (10) calendar days. The City will then make a final determination of the resolution of the dispute and transmit its determination to Optionee.

(8) AMENDMENTS

The terms and conditions of this Agreement may be amended by a written document executed by both the City and Purchaser.

(9) SETTLEMENT

In the event the Optionee exercises its option to purchase, settlement will be held within a reasonable period of time after notice is given to the Optioner, at a date, place and time mutually agreeable to both the Optioner and the Optionee. Optioner shall immediately proceed with notice of a public hearing before City Council and place the request on the Council Agenda for the legally required approval by City Council. At the settlement date, the Optioner will deliver to the Optionee a deed of title, with Special Warranty, in fee simple, and whatever other instruments and documents as may be necessary and proper to vest in the Optionee full, legal, equitable and uncontested title to the property.

(10) The City will insure the building during the period it retains ownership. Optionee will insure their equipment, fixtures and all other personality and shall carry liability insurance naming the City and its officers as also insured under that policy to be evidenced by a Certificate of Insurance sent to the Risk Management Office in City Hall.

WITNESS the following signatures and seals the day and year first above written.

CITY OF LYNCHBURG

By: Walter C. Erwin III (SEAL)
Walter C. Erwin, III
Acting City Manager

DANCE THEATRE OF LYNCHBURG

By: Keith Lee (SEAL)
Keith Lee, Director

COMMONWEALTH OF VIRGINIA,

CITY OF LYNCHBURG, to-wit:

The foregoing instrument was acknowledged before me this 9th day of November, 2000 by the City of Lynchburg, by Walter C. Erwin, III, Acting City Manager.

Jeffery L. Higginbotham
Notary Public

My commission expires October 31, 2004

COMMONWEALTH OF VIRGINIA,

CITY OF LYNCHBURG, to-wit:

The foregoing instrument was acknowledged before me this 10th day of November, 2000 by Keith Lee, Director of Dance Theatre of Lynchburg.

Helen S. Howard
Notary Public

My commission expires Jan. 31, 2001.



The City of Lynchburg, Virginia

CITY HALL, LYNCHBURG, VIRGINIA 24505 • (434) 847-1310
FAX (434) 847-9049

OFFICE OF THE CITY ATTORNEY

WALTER C. ERWIN, III
CITY ATTORNEY

JOYCE M. COLEMAN
SENIOR ASSISTANT CITY ATTORNEY

ELEANOR A. PUTNAM DUNN
ASSISTANT CITY ATTORNEY

GLADYS L. YATES
ASSISTANT CITY ATTORNEY

October 29, 2003

The Dance Theatre of Lynchburg
722 Commerce Street
Lynchburg, VA 24504

Attention: Keith Lee, Director

Dear Mr. Lee:

I wanted to remind you that the Lynchburg Dance Theatre's option to purchase the property at 722 Commerce Street expires on November 10, 2003. The Dance Theatre of Lynchburg will need to take the necessary steps to exercise the option to purchase prior to that date.

Sincerely,

Walter C. Erwin

Dance THEATRE OF LYNCHBURG

Dance Theatre of Lynchburg
creates enthusiasm for the arts,
inspires talent and discipline within students,
provides insight into distinct cultural experiences,
encourages broad-based community involvement
and promotes excellence in the arts.

May 28, 2004

RECEIVED
JUN 04 2004
COUNCIL MEMBERS
OFFICES

Mayor Carl B. Hutcherson, Jr.
Lynchburg City Council
P.O. Box 60
Lynchburg, VA 24504

Dear Mayor Hutcherson:

Board of Directors

Keith Lee, President
Nathaniel X. Marshall, Chair
Susan Allen, Vice-Chair
Tracy Willoughby, Treasurer
Marjette Glass, Secretary

Naomi Amos
Wanda Beverly
Donna S. Clark
Kenneth Garren
Carmi W. Gutherz
Geoffrey Hicks
Dana Horne
Liz H. Johnson
Muriel Mickles
Tanya Rathers
Pamela Risenhoover
Kay Van Allen

I am writing on behalf of the Dance Theatre of Lynchburg and in my position as Chairperson for the Board of Directors. The Dance Theatre of Lynchburg has proudly served the citizens (the youth; the young and the old) of central Virginia. Five years ago it began as a concept, an idea of taking dance directly to the inner city youth. Though the Dance Theatre has grown in its diversity by attracting dancers from all social, economic and racial backgrounds, we have maintained our mission of bringing dance to our downtown youth.

Those who preceded me on this board were successful in convincing our city leaders of the worthiness of this mission and that it could happen downtown. The building located at 722 Commerce Street became its home. Since that time the entire block has been transformed into a menagerie of entrepreneurial enterprises and they stand as a testament to the foresight of our city leaders.

As a pioneer in this quest, the Dance Theatre took on a tremendous burden in the form of an unsecured loan for the building - which we continue to pay. My request is that City Council reconsider the original purchase agreement. The building was purchased for \$40,000. A \$20,000 reduction in price would allow us to direct more of our funds to scholarships and financial aid. Additional reductions would certainly be welcomed.

As you consider this request, I would like to invite you to our facility. For those who have not visited recently, I think you will be impressed. I thank you for the opportunity to present this to you and am available if you have any additional questions.

Sincerely,



Nat Marshall
Chairperson

722 Commerce Street
Lynchburg, VA 24504

Tel: 434-846-6272
Fax: 434-846-6210

Express Yourself!

